

No. 12525

United States
Court of Appeals
For the Ninth Circuit.

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Appellant,

vs.

VIRGINIA BINGER,

Appellee.

Transcript of Record

Appeal from the United States District Court
Southern District of California,
Central Division.

FILED

JUN 16 1950

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Admissions Requested Under Rule 36.....	13, 15
Answer	8
Appeal:	
Appellant's Designation of Record on....	95
Notice of	21
Statement of Points on.....	22, 93
Appellant's Designation of Record on Appeal.	95
Certificate of Clerk.....	92
Complaint for Restitution and Injunction.....	2
Findings of Fact and Conclusions of Law.....	17
Judgment	19
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	21
Reporters Transcript of Proceedings.....	23
Argument on Behalf of Plaintiff by Mr. Scheir	69, 79
Argument on Behalf of Defendants by Mr. Bratter	75

	INDEX	PAGE
Decision		90
Request for Admissions Under Rule 36.....		10
Statement of Points on Appeal.....		22, 93
Witnesses, Defendant's:		
Binger, Virginia Boyd		
—direct		45
—cross		58
—redirect		63
—recross		64
Smith, Eileen		
—direct		65
—cross		68
Witnesses, Plaintiff's:		
Acton, Lillian M.		
—direct		28, 69
—cross		34
—redirect		36
Hamlin, Edwin D.		
—direct		24
Lacy, Madge		
—direct		39
Morris, Kermit J., Jr.		
—direct		37
—cross		38

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ABE I. LEVY,
FRANK L. HIRST,
STEPHEN D. MONAHAN,
ASHER SCHEIR,
BENJAMIN CHAPMAN,
RICHARD G. SOLOF,
EVELYN ST. JOHN,
FAUSTA KUKURITIS,
1206 Santee St.,
Los Angeles 15, Calif.

For Appellee:

ANDREW R. BRATTER,
Security Bank Bldg.,
North Hollywood, Calif.

In the District Court of the United States, Southern District of California, Central Division

No. 9210-PH

TIGHE E. WOODS, Housing Expediter, Office
of the Housing Expediter,

Plaintiff,

vs.

VIRGINIA BINGER, DOES I to X,
Defendants.

COMPLAINT FOR RESTITUTION
AND INJUNCTION

For a First Cause of Action

I.

Plaintiff, as Housing Expediter, Office of the Housing Expediter, brings this cause of action for restitution pursuant to Section 205(a) to enforce compliance with Section 4 of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and the Rent Regulations (10 Fed. Reg. 13528) issued by the Administrator pursuant to Section 2 of the Emergency Price Control Act of 1942, as amended, and/or brings this cause of action pursuant to Section 206 of the Housing and Rent Act of 1947, as amended, 50 U.S.C. Appendix 1881-1902, Public Law 464—80th Congress, 2d Session, and the Rent Regulations issued pursuant thereto.

II.

Jurisdiction of this cause of action is conferred upon this Court [2*] by Sections 205(c) of the Emergency Price Control Act of 1942, as amended, and/or Section 206 of the Housing and Rent Act of 1947, as amended.

III.

At all times mentioned herein prior to July 1, 1947, there was in effect a Rent Regulation for Housing issued pursuant to Section 2(b) of the Emergency Price Control Act of 1942, as amended, for the Los Angeles Defense Rental Area. At all times mentioned herein between July 1, 1947, and March 31, 1948, inclusive, there was in effect a Rent Regulation for Controlled Housing issued pursuant to Section 204(d) of the Housing and Rent Act of 1947 for said Defense Rental Area. 'At all times mentioned herein after March 31, 1948, there was in effect a Rent Regulation for Controlled Housing issued pursuant to Section 204(d) of the Housing and Rent Act of 1947, as amended, for said Defense Rental Area. At all times mentioned herein prior to July 1, 1947, the housing accommodations herein described have been subject to maximum rents authorized and established by the Emergency Price Control Act of 1942, as amended, and the said Regulations issued thereunder. At all times mentioned herein between July 1, 1947, and March 31, 1948, inclusive, said housing accommodations have been subject to maximum rents authorized and established by the Housing and Rent Act of 1947

* Page numbering appearing at bottom of page of original Reporter's Transcript.

and said Regulations issued thereunder. At all times mentioned herein after March 31, 1948, said housing accommodations have been subject to maximum rents authorized and established by the Housing and Rent Act of 1947, as amended, and said Regulations issued thereunder.

IV.

That the defendants, Does I to X, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued. [3]

V.

That the defendant is a resident of the City of North Hollywood, County of Los Angeles, State of California, in the Southern District of California, in the Central Division thereof. Defendant is within the jurisdiction of this Court.

VI.

During all times herein mentioned the housing accommodations known and described as 9715 Sunland Boulevard, Sunland, California, have been located within said Defense Rental Area.

VII.

Defendant received from persons for the use and

occupancy of the said accommodations rents in excess of the maximum rents established by said Rent Regulations. A Schedule is attached hereto and by reference made a part hereof, as though fully set out herein. Said Schedule states the names of the persons occupying said accommodations and the period of occupancy of such persons. Said Schedule states the rents received from said persons during said times. Said Schedule states the legal maximum rent for said accommodations during said times. Said Schedule states the amount of the overcharges received from said persons during said times.

For a Second Cause of Action

Plaintiff re-alleges and incorporates herein Paragraphs I, II, III, IV, V, VI, and VII of his first cause of action as though set out in full herein.

II.

In the judgment of the Housing Expediter, Office of the Housing Expediter, said defendants have engaged in acts and practices in violation of Section 4(a) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and/or in violation of Section 206(a) of the Housing and Rent Act of 1947, as amended, 50 U.S.C. Appendix 1881-1902, Public Law 464—80th Congress, 2d Session, which acts and practices consist of violations of Rent Regulations for Housing [4] (10 Fed. Reg. 13528) issued in accordance with Section 2(b) of the Emergency Price Control Act of 1942, as amended, and/or the Controlled Hous-

ing Rent Regulation issued pursuant to the Housing and Rent Act of 1947, and therefore the Housing Expediter brings this cause of action pursuant to the provisions of Section 206 of the Housing and Rent Act of 1947, as amended. Jurisdiction of this cause of action is conferred by Section 206 of the Housing and Rent Act of 1947, as amended.

Wherefore, the plaintiff demands:

A. That the defendant be ordered and directed to tender to all available tenants as are entitled thereto a refund of all amounts in excess of the maximum rents established by the Emergency Price Control Act of 1942, as amended, and Regulations issued thereunder, and/or the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, which were received by the defendant, his agents, servants, employees and attorneys from said persons as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by said Acts and said Regulations, or, in the alternative that the defendants be ordered and directed to pay the amount of the overcharge to the United States of America.

B. A preliminary and final injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert or participation with them from:

1. Directly or indirectly demanding or receiving amounts in excess of the maximum legal rent, or

from discontinuing, withholding, suspending, or shutting off the normal supply of heat, light, gas, hot and cold water, janitorial services, or other essential services and utilities, or threatening to do any of the foregoing.

2. Violating the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, as heretofore or hereafter amended or superseded.

3. Violating the Housing and Rent Act of 1947, as amended, and Regulations issued thereunder, as heretofore or hereafter amended or superseded, by accepting, demanding, or receiving [5] in any form or manner, rents higher than the established maximum rent prescribed therein.

4. Engaging in any action or course of action, the purpose of which is to evict illegally tenants from the above-described premises, or any other housing accommodations owned, controlled, or managed by the defendants, or from evicting said tenants in any form or manner contrary to the Housing and Rent Act of 1947 and Regulations issued thereunder, as heretofore or hereafter amended or superseded.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ RICHARD G. SOLOF,
Attorneys for Plaintiff. [6]

Housing accommodations located at 9715 Sunland Blvd., Sunland, California. Unit, 9715; Name of Tenant, Mr. & Mrs. J. D. Acton; Period of Overcharges, 4-1-47 to 5-17-48; Amount Rent Paid, \$25.00 Wk.; Maximum Rent \$40.00 Mo.; Amount of Overcharges, \$915.00. Total Amount Overcharges \$915.00.

Statement referred to in Paragraph VII of plaintiff's first cause of action.

[Endorsed]: Filed February 4, 1949. [7]

[Title of District Court and Cause.]

ANSWER

Now Comes the above-named defendant, and for answer to the first cause of action alleged in the complaint herein, denies, admits and alleges as follows:

I.

Answering paragraph VII of the first cause of action alleged in said complaint, the defendant denies each and every allegation contained therein; and specifically denies receiving the rents as alleged from the tenants named in said complaint; and specifically denies that the maximum rent was \$40.00 per month.

II.

As and for a further and additional defense to paragraph VII of the first cause of action alleged

in said complaint, defendant alleges that the overcharges of rent alleged to have been collected from April 1, 1947, to February 3, 1948, occurred more than one year prior to the commencement of this action. [8]

For answer to the second cause of action alleged in said complaint, the defendant denies, admits and alleges as follows:

I.

Denies generally and specifically all of the allegations of paragraph VII, of the first cause of action in said complaint realleged in paragraph I of the second cause of action thereof.

II.

Denies generally and specifically each and every allegation contained in paragraph II of the second cause of action of said complaint herein.

III.

For a further defense to paragraph II of the second cause of action alleged in said complaint, defendant alleges that said tenants do not now occupy said housing accommodations and have not occupied the same for several months; and that defendant is not now, and since May 17, 1948, has not been the owner of the housing accommodation described in said complaint.

/s/ ANDREW R. BRATTER,
Attorney for Defendant.

State of California,
County of Los Angeles—ss.

Virginia Binger being by me first duly sworn, deposes and says: that she is the answering defendant in the above-entitled action; that she has read the foregoing Answer and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it is true.

/s/ VIRGINIA BINGER.

Subscribed and sworn to before me this 28th day of February, 1949.

[Seal] /s/ ANDREW R. BRATTER,
Notary Public in and for the County of Los Angeles, State of California.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 1, 1949.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS UNDER RULE
36, FEDERAL RULES OF CIVIL PRO-
CEDURE

Comes now the plaintiff and requests the defendant, Virginia Binger, within ten days after service of this request, to make the following admissions for the purpose of this action only and subject to

all pertinent objections to admissibility which may be interposed at the trial pursuant to Rule 36 of the Federal Rules of Civil Procedure.

1. That defendant, Virginia Binger, is and at all times between April 1, 1947, and May 17, 1948, has been the landlord of and has received the rents for the housing accommodations described as 9715 Sunland Boulevard, Roscoe, California.

2. That the schedule attached to the complaint on file herein truthfully and correctly designates the names of the tenants who occupied the house for the period designated. If the defendant denies the truth of any part of this, she will specify the part denied. [11]

3. That the said schedule truthfully and correctly sets forth the period during which the named tenants occupied the designated house at the designated rent. If the defendant denies the truth of any part of this, she will specify the part denied.

4. That the said schedule truthfully and correctly designates the amount paid as rent by the said tenants. If the defendant denies the truth of any part of this, she will specify the part denied.

5. That in January or February of 1945, the named defendant, or Mrs. Victor A. Binger, registered the whole house at 9715 Sunland Boulevard, for the sum of \$40.00 per month.

6. That no Order of the Area Rent Director modifying the maximum legal rent for the whole house has ever issued.

7. That the maximum legal rent for 9715 Sunland Boulevard, when the same was rented as a whole house, has been at all times between April 1, 1947, and May 17, 1948, the sum of \$40.00 per month.

8. That no part of the rent paid has been refunded to the tenants, or either of them.

9. That no civil action against this defendant has been instituted by the named tenants, or either of them.

Pursuant to Rule 36 of Federal Rules of Civil Procedure, each of the above matters shall be deemed admitted unless within ten days of the service of this request, the defendant serves upon plaintiff the sworn statement or written objections described in said Rule 36.

Dated at Los Angeles, California, this 11th day of April, 1949.

ABE I. LEVY,
FRANK L. HIRST,
T. G. FITZGERALD,

By /s/ T. G. FITZGERALD,
Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 11, 1949. [12]

[Title of District Court and Cause.]

ADMISSIONS REQUESTED
UNDER RULE 36

Comes now defendant Virginia Binger, and in reply to plaintiff's request for admissions under Rule 36, Federal Rules of Civil Procedure, makes admissions and denials as follows:

1. Admits request No. 1.

2. In answer to request No. 2, denies that the names of the tenants are correctly designated. The tenants designated occupied one portion of the premises; and Joe Morris occupied another portion of the premises.

3. In answer to request No. 3, admits that the tenants herein named occupied the designated house, but not at the rents designated in said schedule.

4. In answer to request No. 4, denies that the tenants paid the rents set forth in the schedule; and asserts that said tenants paid \$12.50 per week.

5. Admits the statements in request No. 5.

6. Denies the statement in request No. 6.

7. Denies the statement in request No. 7.

8. Admits the statement in request No. 8.

9. Admits the statement in request No. 9.

Dated at North Hollywood, California, this 20th day of April, 1949.

/s/ ANDREW R. BRATTER,
Attorney for Defendant.

State of California,
County of Los Angeles—ss.

I, Andrew R. Bratter, being first duly sworn,
depose and say:

That I am the attorney for the defendant in the above-entitled action; that I have read the foregoing admissions requested under Rule 36 and know the contents thereof and that the truth of the same are hereby verified upon information and belief as I believe the matters therein stated to be true, and that this verification is made by me as attorney, for the reason that I am unable to communicate with the above-named defendant because the said defendant recently moved and has not yet informed me of her new address and did not leave a forwarding address at her last known place of residence.

/s/ ANDREW R. BRATTER,
Affiant.

Subscribed and sworn to before me this 21st day
of April, 1949.

[Seal] /s/ WILLIAM E. EMPEY,
Notary Public in and for
Said County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 22, 1949. [15]

[Title of District Court and Cause.]

ADMISSIONS REQUESTED UNDER
RULE 36

Comes Now defendant, Virginia Binger, and in reply to plaintiff's request for admissions under Rule 36, Federal Rules of Civil Procedure, makes admissions and denials as follows:

1. Admits request No. 1.
2. In answer to request No. 2, denies that the names of the tenants are correctly designated. The tenants designated occupied one portion of the premises; and Joe Morris occupied another portion of the premises.
3. In answer to request No. 3, admits that the tenants herein named occupied the designated house, but not at the rents designated in said schedule.
4. In answer to request No. 4, denies that the tenants paid the rents set forth in the schedule; and asserts that said tenants paid \$12.50 per week.
5. Admits the statements in request No. 5. [17]
6. Denies the statement in request No. 6.
7. Denies the statement in request No. 7.
8. Admits the statement in request No. 8.
9. Admits the statement in request No. 9.

Dated at North Hollywood, California, this 30th day of April, 1949.

/s/ ANDREW R. BRATTER,
Attorney for Defendant.

State of California,
County of Los Angeles—ss.

Virginia Binger, being by me first duly sworn,
deposes and says:

That she is the defendant in the above-entitled action; that she has read the foregoing Admissions Requested Under Rule 36 and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters that she believes it is true.

/s/ VIRGINIA BINGER.

Subscribed and sworn to before me this 30th day
of April, 1949.

[Seal] /s/ ANDREW R. BRATTER,
Notary Public in and for the County of Los An-
geles, State of California.

Receipt of copy attached.

[Endorsed]: Filed May 2, 1949. [18]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled matter having come on regularly for trial on January 30, 1950, before the Honorable Charles C. Cavanah sitting without a jury; plaintiff being represented by Asher Scheir, Esq., and defendant, Virginia Binger, being represented by Andrew R. Bratter; the evidence having been introduced and the court having heard the argument of counsel, makes the following:

Findings of Fact

I.

That at the time of filing the complaint herein, defendant, Virginia Binger, was a resident of the County of Los Angeles, State of California; and during the times in question was a landlord of controlled housing described as 9715 Sunland Boulevard, Sunland, California, within the Los Angeles Defense Rental Area.

II.

That said controlled housing, during the times in question, [20] April 1, 1947, to May 17, 1948, were rented as follows: The front bedroom with the use of additional rooms and facilities, and all utilities furnished, to Mr. and Mrs. J. D. Acton, at \$12.50 per week; the back bedroom with the same facilities, to Joe Morris, at \$12.50 per week; and that said defendant, Virginia Binger, reserved the right

to use one other room as sleeping quarters for herself.

III.

That the said rents as charged by said landlord for said accommodations were equal to the maximum legal rent for said rooms in said controlled housing during the period in question.

Conclusions of Law

I.

That the court has jurisdiction of the parties and the said controlled housing.

II.

That the controlled housing which are the subject of this action, are within the premises located at 9715 Sunland Boulevard, Sunland, Los Angeles, California, and were for the period commencing April 1, 1947, and ending May 17, 1948, rented as controlled housing within the purview of the Housing and Rent Act of 1947 as amended.

III.

That said controlled housing were in all respects rented in accordance with the provisions of the Housing and Rent Act of 1947, as amended, and the regulations issued pursuant thereto, and not in violation thereof.

IV.

That the defendant, Virginia Binger, is entitled

to judgment against the plaintiff, that the plaintiff take nothing by this action.

Dated this 13th day of February, 1950.

/s/ CHARLES C. CAVANAH,
Judge of the United States
District Court.

Submitted:

.....

Attorney for Defendant.

Receipt of copy attached.

[Endorsed]: Filed February 13, 1950. [21]

In the District Court of the United States, Southern District of California, Central Division

No. 9210-PH-CIVIL

TIGHE E. WOODS, Housing Expediter, Office
of the Housing Expediter,

Plaintiff,

vs.

VIRGINIA BINGER, DOES I TO X,

Defendant,

JUDGMENT

The above-entitled matter came on regularly for trial on January 30, 1950, before the Hon. Charles C. Cavanah, Judge of the above-entitled Court, sitting without a jury; the plaintiff being represented by Asher Scheir, Esq., and the defendant

Virginia Binger, being represented by Andrew R. Bratter, Esq., the evidence having been introduced by the parties and the cause having been submitted to the court for decision; the court having made and filed its findings of fact and conclusions of law herein, declaring that defendant, Virginia Binger, is entitled to judgment against the plaintiff; and a true and correct copy of said findings having been duly served upon the above-named plaintiff, and the time for objections thereto having expired,

It Is Ordered, Adjudged and Decreed that the defendant, Virginia Binger, have judgment against the plaintiff herein, that the plaintiff take [24] nothing by this action.

Dated this 13th day of February, 1950.

/s/ CHARLES C. CAVANAH,
Judge of the United States
District Court.

Presented by:

/s/ ANDREW R. BRATTER,
Attorney for Defendant.

Approved as to form:

/s/ ASHER SCHEIR,
Attorney for Plaintiff.

[Endorsed]: Filed and entered February 13, 1950. [25]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the entire final Judgment entered in this action on the 14th day of February, 1950.

Dated: Los Angeles, California, this 31 day of March, 1950.

ABE I. LEVY,
ASHER SCHEIR,

By /s/ ASHER SCHEIR,
Attorneys for Appellant, Tighe E. Woods, Housing
Expediter, Office of the Housing Expediter.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 31, 1950. [26]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The following are the Points upon which the appellant intends to rely upon the appeal:

1. The Court erred in holding that the maximum rent for the housing accommodations was \$25.00 per week, the aggregate of the maximum rents for two sleeping rooms, and not the sum of \$40.00 per month, the maximum rent for the entire unit.

2. The Court erred in holding that the violations alleged in the Complaint were not established and in refusing to grant judgment in favor of the plaintiff as prayed for in the complaint. [28]

Dated: Los Angeles, California, this 31st day of March, 1950.

ABE I. LEVY,
ASHER SCHEIR,

By /s/ ASHER SCHEIR,
Attorneys for Appellant, Tighe E. Woods, Housing
Expediter, Office of the Housing Expediter.

[Endorsed]: Filed March 31, 1950. [29]

In the United States District Court, Southern
District of California, Central Division

No. 9210-PH

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

VIRGINIA BINGER, DOES I to X,

Defendants.

Honorable Charles C. Cavanah, Judge Presiding

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Monday, January 30, 1950

Appearances:

For the Plaintiff:

ASHER SCHEIR, Esq.,

1206 Santee Street,

Los Angeles 15, California.

For the Defendant Virginia Binger:

ANDREW R. BRATTER, Esq.,

208 Security Bank Building,

North Hollywood, California.

Mr. Scheir: I will call Mr. Hamlin.

The Court: This is one item involved of overcharge?

Mr. Bratter: That is correct.

EDWIN D. HAMLIN,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please?

The Witness: Edwin D. Hamlin.

Direct Examination

By Mr. Scheir:

Q. Mr. Hamlin, by whom are you employed?

A. Office of the Housing Expediter.

Q. In what capacity?

A. Chief rent attorney.

Q. In your capacity as chief rent attorney are you familiar with and do you have access to the official records of the Housing Expediter for the Los Angeles Defense Rental Area?

A. Yes, I do.

Q. Do you have with you the official records pertaining to 9715 Sunland Boulevard in Sunland, California? [2*]

A. Yes, I do.

Q. Mr. Hamlin, I show you what purports to be a registration statement covering a six-room unit at 9715 Sunland Boulevard, Roscoe, California, and ask you if that is a copy of the official records of the Office of the Housing Expediter?

(Testimony of Edwin D. Hamlin.)

A. Yes, it is.

Mr. Bratter: No objection.

Mr. Scheir: If the court please, I offer in evidence the registration statement covering house at 9715 Sunland Boulevard, Roscoe, California, as Plaintiff's Exhibit No. 1, and I ask leave to withdraw the original and substitute therefor a photo-static copy.

The Court: All right, you may do so.

(The document referred to was marked Plaintiff's Exhibit 1, and was received in evidence.)

Q. (By Mr. Scheir): Mr. Hamlin, are there any other orders or documents affecting the house as a whole at 9715 Sunland Boulevard which would change the maximum rent as shown on the registration statement now in evidence as Plaintiff's Exhibit No. 1?

A. No, there are not, as to the whole house.

Q. Are there any records as to individual rooms in that house? A. Yes, there are.

Q. Mr. Hamlin, I show you a registration statement [3] covering front sleeping room at 9715 Sunland Boulevard, and ask you if that is part of the official records of the Office of Housing Expediter?

A. Yes, it is.

Mr. Scheir: Did you want to see this? I offer that.

Mr. Bratter: Yes. There is no objection.

The Court: It will be admitted.

(Testimony of Edwin D. Hamlin.)

(The document referred to was marked Plaintiff's Exhibit 2, and was received in evidence.)

Mr. Scheir: Counsel, in all these instances will you stipulate I may substitute a photostatic copy?

Mr. Bratter: Yes. I wonder if the record could show the dates on these two documents, so the court can have the dates in mind for this phase of the matter.

Mr. Scheir: If your Honor please, the photostatic copy contains all the information.

Mr. Bratter: For the convenience of court and counsel, I think the date should be shown, so that the court will know what we are talking about.

The Court: Give him the date.

Mr. Scheir: The registration statement now in evidence as Plaintiff's Exhibit No. 1 bears the date of January 24, 1945. I offer in evidence the photostatic copy of the registration statement covering front sleeping room at 9715 Sunland Boulevard as Plaintiff's Exhibit No. 2, and that was [4] received in the Office of the Housing Expediter on April 30, 1947.

Q. (By Mr. Scheir): Mr. Hamlin, I show you an order adjusting maximum rent issued June 18, 1947, affecting the front sleeping room at 9715 Sunland Boulevard, Roscoe, California, and ask you if that is part of the official records of the Office of Housing Expediter?

A. Yes, sir, it is.

(Testimony of Edwin D. Hamlin.)

Mr. Bratter: There is no objection.

The Court: Admitted.

(The document referred to was marked Plaintiff's Exhibit 3, and was received in evidence.)

Q. (By Mr. Scheir): Mr. Hamlin, I show you what purports to be a registration statement covering the back sleeping room at 9715 Sunland Boulevard and ask you if that is part of the official records of the Office of the Housing Expediter.

A. Yes, it is.

Mr. Bratter: And that date is what?

Mr. Scheir: April 30. That was received in the Office of the Housing Expediter on April 30, 1947.

Mr. Bratter: No objection.

The Court: It will be admitted.

(The document referred to was marked Plaintiff's Exhibit 4, and was received in evidence.)

Q. (By Mr. Scheir): Mr. Hamlin, I show you what purports [5] to be an order adjusting maximum rent issued June 18, 1947, covering the back sleeping room at 9715 Sunland Boulevard, Roscoe, California, and ask you if that is part of the official records of the Office of the Housing Expediter.

A. It is.

Mr. Bratter: No objection.

The Court: Admitted.

(Testimony of Lillian M. Acton.)

(The document referred to was marked Plaintiff's Exhibit 5, and was received in evidence.)

Q. (By Mr. Scheir): Mr. Hamlin, are there any other registration statements or orders affecting the accommodations at 9715 Sunland Boulevard? A. No, there are not.

Mr. Scheir: I have no further questions, your Honor.

Mr. Bratter: No further questions.

The Court: You will be excused.

(Witness excused.)

Mr. Scheir: Mrs. Acton.

LILLIAN M. ACTON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Lillian M. Acton. [6]

Direct Examination

By Mr. Scheir:

Q. Mrs. Acton, have you ever lived at 9715 Sunland Boulevard, in Sunland, or Roscoe, California?

A. Yes, I have.

Q. During what period of time did you live there?

A. From the first week of April, or the rent

(Testimony of Lillian M. Acton.)

started the first, but we didn't move in until a couple of days later, until July 9, 1948.

Q. That was April of what year? A. 1947.

Q. To May of what year? A. July.

Q. July of what year? A. 1948.

Q. During the time you occupied 9715 Sunland Boulevard, who lived there with you?

A. My husband and my two sons.

Q. How old were your sons when you went there?

A. One was—well, he is thirteen now. He was eleven, I think, when we lived there, and the other was twenty-three.

Q. During the time you occupied 9715 Sunland Boulevard, to whom did you pay your rent?

A. Mrs. Binger.

Q. How much rent did you pay during the period of time [7] you lived there?

A. \$25.00 a week.

Q. You paid \$25.00 every week that you lived there from the period April 1st, 1947, to July of 1948?

A. Yes, we did.

Q. Mrs. Acton, how did you learn of these particular accommodations?

A. Through an advertisement in the paper, in the Citizen-News.

Q. Do you remember the date on which this advertisement appeared in the Citizen-News?

A. March 26, I believe.

Q. Of what year? A. 1947.

(Testimony of Lillian M. Acton.)

Q. Mrs. Acton, I show you what purports to be a photostatic copy of page 22 of the Citizen-News dated Wednesday, March 26, 1947. I call your attention to the advertisement enclosed in red, and ask you if that is the advertisement which you read?

A. Yes, that is.

Mr. Bratter: I object to this as being wholly immaterial, for the reason——

Mr. Scheir: I haven't offered it yet, your Honor. I will offer this now, and you can make your objection. I offer this, your Honor, as Plaintiff's next exhibit. [8]

The Court: That is an advertisement?

Mr. Scheir: Advertisement from a newspaper, yes, your Honor.

The Court: Why is it admissible?

Mr. Scheir: It is admissible for this reason: The issue in this case, your Honor, is whether or not these people rented the house as a whole, in which event the maximum rent of \$40.00 would apply. If they rented individual rooms, it is the contention of the defendant then the room rent would apply. That is why I offered in evidence all the documents pertaining to these particular premises, not only the registration statement covering the house in its entirety, but also the registration statements and orders for the individual rooms.

The Court: This is an advertisement in the paper.

(Testimony of Lillian M. Acton.)

Mr Scheir: The advertisement in the paper will help the court to determine whether or not this house was rented in its entirety or whether individual rooms in the house were rented by these people.

The Court: Objection sustained to the offer. In this case the question is what did the parties do.

Q. (By Mr. Scheir): Mrs. Acton, did you have any negotiations with Mrs. Binger relative to the renting of these accommodations at 9715 Sunland Boulevard? A. Yes, I did. [9]

Q. Do you recall when you had those negotiations with her? A. March 28, 1947.

Q. Where were those negotiations held?

A. Her home in North Hollywood.

Q. Was anybody present besides you and Mrs. Binger? A. Yes, sir, my son, my older son.

Q. Please tell the court what was said by you.

Mr. Bratter: Just a moment. Will you ask her who was present?

Mr. Scheir: She said her son, her older son.

Mr. Bratter: What is his name?

The Witness: Morris, Joe Morris.

Q. (By Mr. Scheir): Joe Morris is your son?

A. Yes, he is.

Q. By a former marriage? A. Yes.

Q. Will you please tell the court what was said at the time that you had your negotiations with Mrs. Binger relative to the renting of these particular premises?

A. She asked me if we had transportation, be-

(Testimony of Lillian M. Acton.)

cause there was no transportation out there, and how long we wanted to live there, and she had the house up for sale at the time and she said it would be taken off the market, and then when she said that we could rent the house she made the receipt out for——

Mr. Bratter: Your Honor, I will object to any testimony by this witness except the conversations that were had, the statements made by Mrs. Binger to her and statements made by her to Mrs. Binger.

The Court: Well, that is all she has testified to, and having a receipt that was made out, she said. Go ahead. That is all she has testified to.

The Witness: The receipt was made out for \$25.00, rooms with kitchen privileges, and I asked why they were being made out that way, and that I was not looking for rooms, I wanted a house. She said, "That has nothing to do with it, you are renting the house and the house is yours for as long as you want it." This is the way I got my receipt. I called in the O.P.A. after that.

The Court: You speak of a house. What is this, rooms or a house?

The Witness: No, sir, it is a house.

The Court: It is a house?

The Witness: Yes, sir, a five-room house.

The Court: Go ahead.

Q. (By Mr. Scheir): What does this house consist of, Mrs. Acton?

A. A living-room, dining-room, kitchen, two bedrooms and a service porch. [11]

(Testimony of Lillian M. Acton.)

Q. Did Mrs. Binger tell you how much the rent would be? A. Yes, she did.

Q. What did she say?

A. She said \$25.00 a week.

Q. Mrs. Acton, I show you what purports to be a receipt dated March 28, 1948, for \$25.00, and ask you if that is the receipt which was given to you by Mrs. Binger when you first rented the house.

A. Yes, it is.

Mr. Scheir: If the court please, I offer it in evidence.

Mr. Bratter: No objection.

The Court: Admitted.

(The document referred to was marked Plaintiff's Exhibit 6, and was received in evidence.)

Q. (By Mr. Scheir): Mrs. Acton, did you receive receipts each time you paid the rent?

A. Yes, I did.

Q. I show you what purports to be two receipts attached one to the other, dated April 8, 1947, and ask you if those receipts were received by you for payment of the rent? A. Yes, they were.

Mr. Bratter: No objection.

The Court: Admitted.

(The document referred to was marked Plaintiff's Exhibit 7, and was received in evidence.) [12]

Q. (By Mr. Scheir): Mrs. Acton, at various

(Testimony of Lillian M. Acton.)

times did you receive receipts in that form, one attached to the other, whenever you paid the rent?

A. Yes, I did.

Q. Mrs. Acton, I show you a series of such receipts and ask you if those represent most of the receipts that you received when you paid the rent to Mrs. Binger.

A. Yes, they do.

The Court: Don't you think that you could examine those in some recess? It is going to take a long time to go through all those.

Mr. Bratter: Very well, your Honor. Could the ruling on their acceptance in evidence be reserved?

The Court: Reserved until you have a chance to examine them.

Q. (By Mr. Scheir): Now, Mrs. Acton, during the time you occupied these premises did you yourself have access to the entire house?

A. Yes.

Q. And did your husband have access to the entire house?

A. Yes.

Q. Did both of your sons have access to the entire house?

A. That is right. [13]

Mr. Scheir: I have no further questions of this witness, your Honor.

The Court: Any cross-examination?

Mr. Bratter: Yes, your Honor.

The Court: Proceed.

Cross-Examination

By Mr. Bratter:

Q. Mrs. Acton, when you called at the home of

(Testimony of Lillian M. Acton.)

Mrs. Binger in the latter part of March, 1947, wasn't there a Mrs. Smith also present?

A. No, sir, there was no one else in the room.

Q. Did you at that time tell Mrs. Binger that Mr. Morris is your son by a prior marriage, at that time age twenty-three, was also interested in getting a room for himself? A. No, sir.

Q. Did Mrs. Binger at that time tell you that she would rent you and Mr. Acton a room for \$12.50 per week?

A. No, sir, I was not interested in a room.

Q. And that in connection with that room you would have privileges in the house, the kitchen and bathroom? A. No, sir.

Q. Is the dining-room closed off from the remainder of the house by a door? A. No, sir.

Q. There is no door? [14]

A. There is a door on to the hallway, but there is no doorway between the kitchen, and there is a big archway between the dining-room and the living-room, and there is an open doorway between the dining-room and the kitchen.

Q. There is a davenport with a folding bed in it in the dining-room, is there not?

A. Yes, that is right.

Q. And a clothes closet as well?

A. No, sir, there is no clothes closet.

Q. Inside of the dining-room or adjacent to it?

A. No, sir.

Q. Did Mrs. Binger tell you at that time that

(Testimony of Lillian M. Acton.)

the reason she was renting out rooms in this house was because she was being threatened with eviction herself and may have to vacate and move into that house and she would keep the dining-room for her own room?

A. Rooms were not mentioned at all.

Q. Answer yes or no, did she tell you that?

A. No, sir.

Q. Some of these receipts that you have identified here are made out to Mr. Morris and some are made to you, isn't that correct?

A. That is right.

Q. Where a receipt calls for or is for \$25.00 it states that it is for two weeks' rent, isn't that correct? [15]

A. That is right. That is what the receipts say.
Mr. Bratter: That is all.

Redirect Examination

By Mr. Scheir:

Q. Mrs. Acton, was the cooking for the entire family done in the kitchen?

A. That is right.

Q. Did the entire family use the dining-room at the same time daily? A. Yes.

Mr. Scheir: No further questions.

The Court: You are excused.

(Witness excused.)

Mr. Scheir: Mr. Morris, please.

KERMIT J. MORRIS, JR.,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your name.

The Witness: Kermit J. Morris, Jr.

By Mr. Scheir:

Q. Mr. Morris, are you related to Mrs. Acton, who was on the witness stand just before you?

A. Yes.

Q. In what way is she related to you?

A. She is my mother.

Q. Did you occupy the premises at 9715 Sunland Boulevard at the time your mother did?

A. I did.

Q. Were you present at the time your mother had these negotiations with Mrs. Binger relative to the rent of the house at 9715 Sunland Boulevard?

A. Yes.

Q. Will you tell the court what took place at that time?

A. Well, I remember that there was some rent paid and receipts given for rent.

Q. Do you recall any of the conversations had at that time between your mother and Mrs. Binger?

A. No, not very much of it.

Q. Did you yourself enter into any of the discussions?

A. No.

Q. Did you at any time rent or offer to rent a

(Testimony of Kermit J. Morris, Jr.)

room from Mrs. Binger at these premises?

A. No.

Q. Did you hear any discussion about the renting of rooms at these premises?

A. No, I didn't. [17]

Mr. Scheir: No further questions.

Cross-Examination

By Mr. Bratter:

Q. What was your business at the time you went to Mrs. Binger's house in March, 1947?

A. I was employed by Flying Tiger Air Lines as a flight radio operator.

Q. How long had you been an aviator?

A. I had been an aviator for approximately three years in the Army, and at that time I had worked for the Flying Tiger Lines for approximately three months.

Q. And were you present when your mother had this conversation with Mrs. Binger, I mean close enough so that you could hear what was said?

A. At times I was, I believe, yes.

Q. State whether or not it is a fact that the first part of the conversation dealt with negotiations for a room for Mr. and Mrs. Acton at \$12.50 per week.

A. I don't remember that.

Q. State whether or not at the time the negotiations were under way and after arrangements had been made for such a room, that Mrs. Acton then said to Mrs. Binger that you would like to rent a room also under the same conditions.

A. No. [18]

(Testimony of Kermit J. Morris, Jr.)

Q. You don't recall that?

A. No, I never heard that.

Mr. Bratter: That is all.

Mr. Scheir: No further questions of this witness, your Honor.

The Court: You are excused.

(Witness excused.)

Mr. Scheir: Mrs. Lacy.

MADGE LACY,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Madge Lacy.

Direct Examination

By Mr. Scheir:

Q. Mrs. Lacy, what is your business or occupation? A. I am a real estate broker.

Q. Where is your office located?

A. 6727 $\frac{1}{4}$ Hollywood Boulevard.

Q. On or about March 26, 1947, was your office located at 6727 $\frac{1}{4}$ Hollywood Boulevard?

A. 1947, yes.

Q. Are you here in response to a subpoena duces tecum [19] in which you were directed to bring certain records with you? A. Yes.

Q. Do you have those records with you?

A. No.

(Testimony of Madge Lacy.)

Q. Where are those records, do you know, Mrs. Lacy? A. No.

Q. Do you know what happened to them?

A. No. No reason why I should keep them.

Q. You don't have them?

A. No, they are simply information on houses, but I keep all my receipts of what people pay me.

Q. Do you know Mrs. Binger?

A. I have only seen her one time until—at that time, that was a year ago, she came to my office to list some property upon Hubbard Street. That is all I know.

Q. Did she ever list the property at 9715 Sunland Boulevard with you?

A. Well, Mrs. Binger did list something, I couldn't tell you what, I don't know, in fact I have no evidence to show where it was located. I don't recall.

Q. Do you know Mrs. Acton?

A. Well, she came in the other day and said, "Mrs. Lacy, you remember me?" At first I said I didn't know her. Then she said, "Remember, I am the one that went to Mrs. Binger's." I said, "Are you?" That is all I know. [20]

Q. You don't recall sending her to 9715 Sunland Boulevard?

A. I remember sending somebody out there. I am supposed to tell what I know only, not tell—

Q. You are only to tell what you remember. That was the way the question went. Do you recall sending someone out to 9715?

(Testimony of Madge Lacy.)

A. Well, I do remember sending someone to Mrs. Binger's. The only thing, I couldn't tell—of course, I had thousands of these listings come into my office every couple of months.

Q. Mrs. Lacy, I show you a photostatic copy of page 22 of the Citizen-News for March 26, 1947, and call your attention to the ad which appears therein enclosed in red and ask you if you had that ad inserted in the paper.

Mr. Bratter: Just a moment. I am objecting to that, your Honor, for the same reasons given before. That is this advertisement that was offered before.

Mr. Scheir: Your Honor, I am trying to show how these premises were listed, that they were listed as a house.

Mr. Bratter: How is this binding on these parties? What is published in newspapers and magazines. We are concerned with what these parties have said and done.

The Court: This is excluded. The court has ruled on that.

Mr. Scheir: Your Honor, this ad was inserted pursuant to [21] listing by Mrs. Binger with the Lacy Realty Company. We are trying to show how it was listed in the newspaper, and that is why my offer is made.

The Court: You claim it was listed by Mrs. Binger?

Mr. Scheir: That is correct, your Honor.

(Testimony of Madge Lacy.)

The Court: That is different.

The Witness: Oh, no, that was listed at my request. She had nothing to do with my advertisement. I just listed it at the number like I just listed that——

The Court: The objection is sustained. She said she had no knowledge.

The Witness: At that time she didn't even have any knowledge of it, no.

The Court: Go ahead. The court has ruled.

The Witness: I can't tell only from the original receipt or from the check number, the original receipt showing money that was given me. I always make a duplicate and give them the original, and then if they come back at any time and want to get any money back, I have the copy. I may have all those receipts, I don't know, I may have them, and I recall very little information on that. That is over three years ago.

Q. (By Mr. Scheir): Do you remember sending someone out to 9715 Sunland Boulevard?

A. I wouldn't say Sunland, but I sent someone to Mrs. [22] Binger's house out in the Valley, but the information, I don't know about that.

Q. Your sending someone to Mrs. Binger's property could only be at her request?

A. That is right, yes.

Q. Whenever you advertise any of your listings, all of your information is received from the person making the listing, is that correct?

(Testimony of Madge Lacy.)

A. That is right.

Q. In other words, whatever information you gave to the newspaper was information that you have received from the listing?

A. Yes, but I will say in all fairness that the chances are I put it on a weekly basis, and sometimes I might put it on a monthly basis, because sometimes people intend to pay on a weekly basis, and it is the same thing in the long run, so I wouldn't know. It isn't anything that would be vital, you know. I have no interest in this case at all.

Mr. Bratter: I think we are getting far afield with this witness. There is nothing brought out by her testimony that has anything to do with our question. It is all immaterial. I ask that all the testimony be stricken.

The Court: Not all of her testimony, no.

Mr. Scheir: It is very obvious, your Honor, if this witness sent someone to Mrs. Binger's property in the Valley [23] that she did it on instructions from Mrs. Binger, and received her information from Mrs. Binger. We are trying to show that this ad was inserted in the paper just about the time, if not just before the property was rented to Mrs. Acton, and that the only way that Mrs. Lacy could get this information was from Mrs. Binger, otherwise how could she send Mrs. Acton out to this property in the Valley, and it is listed in the newspaper under Houses and Apartments, and it is

(Testimony of Madge Lacy.)

listed as a house, and we contend that that will show what the intention of the parties was when they rented the house. Mrs. Acton did not visit the place pursuant to an ad listing rooms for rent. She visited the house pursuant to an ad listing a house for rent. That is our contention.

The Court: When you listed this house for rent, was that done at Mrs. Binger's request?

The Witness: No, Mrs. Binger knew nothing of it. I always took it on myself.

The Court: Took it on yourself?

The Witness: That is right. She knew nothing of it.

The Court: Sustained. You have objected and I have ruled.

Mr. Scheir: No further questions, your Honor.

Mr. Bratter: No questions.

The Court: They are through with you. You are excused.

(Witness excused.) [24]

Mr. Scheir: That is the plaintiff's case, your Honor.

(Whereupon the plaintiff rested his case.)

Mr. Bratter: Mrs. Binger, will you take the stand, please?

VIRGINIA BOYD BINGER,

the defendant herein, called as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Virginia Boyd Binger.

Direct Examination

By Mr. Bratter:

Q. Where do you reside, Mrs. Binger?

A. At 215 South Normandie.

Q. That is in Los Angeles? A. Yes, it is.

Q. Where were you residing in March of 1947?

A. 1816 North Wilton.

Q. In Los Angeles. Did you own a house at that time on Sunland Avenue in what is referred to here as the Valley? A. Yes, I did.

Q. That was in Roscoe? A. Yes. [25]

Q. And how large a house was that?

A. Well, it had two bedrooms, a kitchen, a dining-room, a service porch and a living-room, and then there was a space between the kitchen and the hall that had a closet in it and a dressing table, and the bath.

Q. Was the dining-room a separate room, separated from the rest of the house by a door that could be closed, or was that an open room?

A. No, the dining-room and the bedroom could be separated from the rest of the house. The bedrooms were off a hall.

Q. I am talking about the dining-room.

(Testimony of Virginia Boyd Binger.)

A. The dining-room, yes, was separated—it opened on into the living-room, but it was separated from the rest of the house.

Q. Was there any sleeping accommodation in the dining-room at that time?

A. Yes, I had put, when we had a chance to move in there I put a bed in there or davenport.

Q. And was the use of a cothes closet available to anyone occupying the dining-room for sleeping quarters?

A. Yes, that is what we used it for when we owned the home.

Q. Prior to March, 1947, was the home in the same physical condition as it was at the time you had the negotiations with [26] Mrs. Acton about the renting of the room, as to improvements?

A. You say at the time when it was listed was it in the same condition as it was——

Q. Prior to March, 1947.

A. No, it was not the same at all. Notice of completion was given after I had completed—when I got the house from Mr. Binger it was only partially furnished, partially finished, had no clothes closets, walls were not in, and doors were not in. It was not finished at all.

Q. Now, prior to March, 1947, particularly commencing in the year 1945, do you know as to whether or not there was a rent ceiling fixed on that home by the rent director in this area?

A. I didn't know anything about it at first, but

(Testimony of Virginia Boyd Binger.)

Mr. Binger went in the Service and I found out then.

Q. What was the rent ceiling at that time?

A. There wasn't any. He had rented it without putting a ceiling on it, so I put one on. I think that came out and it was already rented when they put the ceiling on. He had it rented to some people.

Q. What was the ceiling? A. \$40.00.

Q. \$40.00 per month?

A. For the house as is.

Q. As the house was then? [27]

A. Yes, it was not finished on the——

Q. Prior to March, 1947, and before you had negotiations with anyone about renting in 1947, what, if anything, was done to the house?

A. Well, first I had to settle the community property with Mr. Binger, then I got hold——

Q. Let's get down to any improvements, if any, made to the house.

A. That is what I am talking about. I had a contractor come in there and landscape everything, clean up the mess that they had left. That was the first thing I did. Then I had the contractor come in and go over the whole house to get it constructed and finished. There were doors with no doors, no clothes closets——

Q. You mean doorways without doors?

A. Yes, between the dining-room and the doorway to the kitchen.

Mr. Scheir: If your Honor please, I have no objection to this line of testimony in as far as it

(Testimony of Virginia Boyd Binger.)

is material to this action, but if improvements were made to the property, that made it more usable, that would have made a change in the matter of rental, and they would have to petition for an adjustment of rent.

The Witness: I didn't know that.

Mr. Scheir: That was never done to this time, and the [28] maximum rent could not be changed except on order of the area rent director.

Mr. Bratter: Your Honor, this is merely preliminary. Any action relating to recovery and restitution of rent is addressed to the equitable considerations of the court.

The Court: They are fixed.

Mr. Bratter: How is that?

The Court: The law regulates the procedure you have to take before the administrator before the court could vary it.

Mr. Bratter: This is merely preliminary to an action later taken by the rent director in changing, as we contend, in changing the rent ceiling on this property.

The Court: Well, overruled. Go ahead.

Q. (By Mr. Bratter): Make it very brief, but tell us what improvements were made thereto and the cost of those improvements?

A. Well, I took out an FHA of \$1500, and I paid out, I put on \$300—

Q. Mrs. Binger, how much did those improvements cost all told?

(Testimony of Virginia Boyd Binger.)

A. All together around \$3,000.

Q. Around \$3,000. How much ground did you have on this property?

A. I had an acre. [29]

Q. An acre of ground?

A. But I didn't use the back of it.

Q. And state whether or not it is correct to say that when you completed those improvements that you had a completed home all finished.

A. Sure.

Q. With the improvements all finished altogether. Now, in March of 1947, prior to the time that you met Mrs. Acton, was your house vacant?

A. Well, it was vacant because I had it up for sale, and my daughter lived there.

Q. Your daughter was occupying the property, but you had no tenants there?

A. I put them out when I got out.

Q. For how long a time had the place been without occupancy by tenants for hire?

A. I don't remember just exactly.

Q. Well, was it a matter of months?

A. I think so, yes, about three months. I don't remember exactly, because the people stayed on until they could find a place, before the place was finished.

Q. In March of 1947, the latter part of March, 1947, did you meet Mrs. Acton?

A. Yes, Mrs. Lacy sent Mrs. Acton out. All the while I had had dealings with Mrs. Lacy. [30]

(Testimony of Virginia Boyd Binger.)

Q. Where did you meet her?

A. At my home.

Q. Who was present at the time she came?

A. Well, her son was with her.

Q. When you say "her son" who are you referring to? A. Mr. Morris.

Q. That is Joe Morris who testified here a while ago? A. Yes.

Q. Who else, if anybody, was present?

A. Well, there were people in and out. Mrs. Smith, Eileen Smith was with me. I don't know whether she was there at the exact time, but she was there most of the time.

Q. She was there during the time that Mrs. Acton and Joe Morris were there talking to you about renting this place? A. Yes.

Q. In that regard we are more particularly concerned, possibly, with what the conversation was you had with Mrs. Acton and with Joe Morris, what they said and what you said concerning the rental of this place.

A. I don't remember word for word what I said, but I made it very clear that I would let them have the use of the whole house, but I had to rent it as rooms, because I had a little baby, and I showed—I said that I had had trouble where I was living and I didn't know when I would have to give [31] up my business and to move, and that I would rent them the house with use of kitchen privileges, using the bedrooms, and so she said that

(Testimony of Virginia Boyd Binger.)

her son might wish one, he was out of town most of the time.

Q. Now, when you first had your conversation with Mrs. Acton, was there anything said about the rental of two bedrooms by both Mr. and Mrs. Acton and by Joe Morris? A. No.

Q. What was the discussion centered upon?

A. It was strictly of Mrs. Acton talking about taking one and Mr. Morris taking another, and as far as I know, that is what I told Mrs. Lacy, that I wanted to rent the house with the bedrooms.

Q. What did Mrs. Acton say to you about renting the bedroom? What did she say to you in substance, not word for word, but substantially what did you say and what did they say?

A. Well, I just said that I would never interfere with them but I just wanted a place in case I had to vacate at any time, if I needed a place, the landlord was deceased, and I needed a residence, you know, a place to bring my baby to, after all I had a little baby.

Q. Very well. What was said about the rent that was to be paid by Mrs. Acton and the rent that was to be paid by Joe Morris? [32]

A. Well, \$25.00. I had stated every two weeks would be \$25.00, \$25.00 for both rooms, \$12.50 apiece.

Q. \$25.00 every two weeks? A. Yes.

Q. Was that for each room?

A. \$12.50 apiece.

(Testimony of Virginia Boyd Binger.)

Q. What was that to include, just the use of each room?

A. The whole use of the house and the grounds. I didn't want to interfere with them at all except that I wanted to keep the whole thing, so I just wanted the protection, that is to say, in case I had to—I have got daughters to go to, but I was having difficulty at the house where I was living in, so I got out there quite often. That is why I took it off of the market.

Q. What about the use of the utilities? Who was to pay for the utilities, water, gas and electricity?

A. I paid all utilities, gas, light and water, which amounted to——

Q. Did you agree at that time, when you had your conversation with them and after you talked about the rent being \$12.50 a room or \$25.00 for the two rooms, what was said then about the payment of utilities?

A. I said I would furnish the light and gas, I could rent—usually in town they usually furnish them light, gas [33] and water.

Q. And that included light and water as well?

A. Water and everything.

Q. Prior to that time when you had the place and when it was rented under the former ceiling of \$40.00 a month, what arrangements were made about the payment of utilities?

A. Well, the gas and light was in Mr. Binger's

(Testimony of Virginia Boyd Binger.)

name. You see, I didn't own the house at the time.

Q. Answer me specifically. Who paid the utilities before, the tenant or did you?

A. The tneant paid us.

Q. The tenant paid you, so when he paid \$40.00 a month he paid that merely for the use of the premises and paid his utilities in addition to that?

A. Yes.

Q. During all of the time that the Actons lived on this property, did you pay for the utilities?

A. Yes.

Q. And what did those utilities come to on the average for the month during the time that they lived there?

A. I don't know how much now. I would say a minimum of fifteen and a maximum of twenty, or something like that.

Q. It varied from month to month?

A. Yes. That was water, light and gas.

Q. Now, after you had this conversation did you at any [34] time report this matter to the rent director or housing expediter in this area?

A. Well, yes, I immediately called up in Pasadena and reported it, and when the man came to the house——

Q. Well, you answered the question. You said you reported it.

A. I figured that they had this on there, naturally, because I went up there——

Q. Just a moment. You said immediately after

(Testimony of Virginia Boyd Binger.)

you had this conversation with Mrs. Acton you reported the terms to the area rent director?

A. I went over to Pasadena.

Q. What did you do there?

A. Listed the place.

Q. You filed a listing there? A. Yes.

Q. For how much rent?

A. \$25.00 a week, \$12.50 each room, the front room—I filed two of them, one for the front room and one for the back room, and I filed them at \$12.50 a week, and I named the tenant.

Q. The Plaintiff's Exhibit No. 2 refers to the front sleeping room listed in the name of James Acton and wife at \$12.50 per week commencing April 1, 1947. Is that the way you reported it over there? You nodded your head. You [35] have to speak up so the reporter can put it in the record.

A. Yes.

Q. At the same time you filed a registration in the name of Joe Morris? A. Yes, I did.

Q. That was for the back sleeping room?

A. Yes, it was.

Q. That was at the same rate, \$12.50 per week commencing April 1st, 1947? A. Yes, it was.

Q. And on each of those listings did you list the services that were to be given in connection with the use of those sleeping rooms?

A. Yes, I did.

Q. And those services included furnishings in the house. Was the house completely furnished?

(Testimony of Virginia Boyd Binger.)

A. Yes, it was, all except linens.

Q. Except linens. The bedrooms were furnished with beds and dressers? A. Yes, sir.

Q. The living-room had the usual living-room furniture in it? A. Yes, sir.

Q. The kitchen was completely furnished, was it, including a refrigerator? [36]

A. Refrigerator and stove, yes, sir.

Q. Now, after you filed these listings or these requests for registration, did you get any report or any statement from the rental director of this area as to whether or not your registration for \$12.50 per week for each room with the facilities that you have listed was granted?

A. Yes, I did. It wasn't.

Q. What did the rent director do about that?

A. He changed it to \$9.50 for one or \$3.00 for another in each room. \$9.50 for one party in a room and \$3.00 for additional, which made it \$12.50, the same as I had it.

Q. In other words, under the rent ceiling fixed by the rent director you were only entitled to charge \$12.50 per room if it was occupied by two people?

Mr. Scheir: I will object, your Honor. The registration statements speak for themselves.

The Court: I think that is what she understood it to mean, according to her testimony.

Mr. Bratter: I might say, your Honor——

The Court: Go ahead. I have ruled. No use arguing.

(Testimony of Virginia Boyd Binger.)

Q. (By Mr. Bratter): So that from that time Mr. and Mrs. Acton paid \$12.50 per month, is that correct?

A. They usually paid \$25.00 every two weeks.

Q. \$25.00 every two weeks and Mr. Morris paid \$25.00 for every two-weeks occupancy of his room? [37]

A. That is right.

Q. Do you still own that property?

A. No, I don't. I had to sell it.

Q. How long since you have owned this property? To refresh your recollection, was it May 17th, 1948?

A. I think I sold it—let me see. July, 1948, I think, 1948 I sold it—yes, July, 1948.

Q. And you do not now own the property and have not owned it then since July of 1948?

A. No, I have not.

Q. Now, a moment ago you testified concerning your reasons for wanting to reserve one room and privileges of the house in the event you had to move there.

A. Yes.

Q. Did that have to do with the eviction that was being threatened at your place in Los Angeles where you were renting?

A. Absolutely. I felt that place is in my name and I didn't know that I would have a place to take my baby. I didn't intend to go out and make it my residence, but I wanted a place to go.

Q. In March, 1947, when you had your negotiations for rental with Mrs. Acton and Joe Morris,

(Testimony of Virginia Boyd Binger.)

were you then being threatened with eviction in that place? A. Yes, sir. [38]

Q. I don't know whether I asked you, but at the risk of repetition, did you then receive the rent from Mrs. Acton to March 27, 1948, or March 28, 1948, at the rate you have given us and from Joe Morris at the rate you have given us, up until they no longer were your tenants? Is that correct?

A. Yes, sir.

Q. Was this 1947? A. 1947, yes, sir.

Q. Do you have anything further?

A. No, but except that I have never any intention—that is of the O.P.A., I never made that statement.

Q. When you were collecting the rent from Mrs. Acton and from Joe Morris after you had made a registration with the office of the rent director and after you had received the decisions from them, were you receiving it in accordance with the order of the rent director?

Mr. Scheir: I will object to that, your Honor. The orders will speak for themselves.

The Court: Sustained.

Q. (By Mr. Bratter): And did you continue to charge rent at the rates you have mentioned, believing that you had a right to do so under the order made by the director of rents in this area?

Mr. Scheir: I will also object, your Honor, that whether or not this defendant knew that she was overcharging is [39] immaterial, inasmuch as this

(Testimony of Virginia Boyd Binger.)

is an action for restitution and not for treble damages.

The Court: Sustained.

Mr. Bratter: No further questions.

Cross-Examination

By Mr. Scheir:

Q. Mrs. Binger, do you own any property now?

A. No, I don't.

Q. Do you manage any property now?

A. What do you mean, manage?

Q. Do you manage or operate any property now? A. I lease a house, yes.

Q. You lease a house?

A. I rent a house, yes.

Q. When you rented this property to Mrs. Acton you knew that at that time the maximum rent was \$40 a month for the entire house, didn't you?

A. I had no idea that that \$40.00 a month would be after the house was completed, I had no idea whatsoever.

Q. On January 24, 1945, you filed a registration statement?

A. I had nothing to do with the house in 1945. Mr. Binger was the owner. Although I might have been his wife, I had nothing to do with it. [40]

Q. I show you the original registration statement, a photostatic copy of which is now in evidence as Plaintiff's Exhibit No. 1, and ask whether

(Testimony of Virginia Boyd Binger.)

the signature appearing on the bottom thereof is yours.

A. As I said, Mr. Binger——

Q. Is that your signature?

A. Yes, but I didn't rent the house. He rented the house.

Q. That is your signature?

A. It certainly is, but——

Mr. Bratter: Mrs. Binger, if you will just listen to the question.

The Witness: Victor A. Binger, I explained before——

The Court: You answer his question.

Q. (By Mr. Scheir): You say that at the time you registered this house, filed your registration statement, your house was not completed?

A. No, it was not anywhere near completed.

Q. Is there anything appearing on this registration statement showing that this house is registered on an unfinished basis?

A. What do you mean?

Q. When you filed your registration statement, you did not say to the Office of Price Administration at that time that you were registering the place on an unfinished [41] basis?

A. I told them it was as is.

Q. You signed this registration statement saying that the place was rented in August of 1942, at \$40.00 per month, is that correct?

A. Yes.

(Testimony of Virginia Boyd Binger.)

Q. So when you say the house was unfinished you don't mean that it was uninhabitable, do you?

A. We were living in it while we were building it, and that is the way they were living in it.

Q. Mrs. Binger, you have never filed a petition for increase of rent with the Office of the Housing Expediter or the Office of Price Administration, have you?

A. No, that is why I had the O.P.A. come up there.

Q. You have never filed an application for an increase?

A. I don't know how to file petitions for those things. I have never had to do that, and I thought the O.P.O. knew that when I listed and called them.

Q. Mrs. Binger, during the time that the Actons and Joe Morris lived at 9715 Sunland Boulevard, did you ever occupy any part of that house?

A. Well, of course not. I still wanted a place to occupy in case I had to give up my house.

Q. You never did go over there?

A. I said that, however, that is what I wanted, protection [42] for my son.

Q. Mrs. Binger, I show you the original of the registration statement registering the front sleeping room and the original registering the back sleeping room at 9715 Sunland Boulevard, and ask if those are your signatures appearing thereon.

A. Yes.

Q. Mrs. Binger, I show you form S-R-LA-283,

(Testimony of Virginia Boyd Binger.)

attached to this registration statement, and ask you if the signature appearing thereon is yours. Is that your signature? Is that your signature?

A. Yes, but I want to read it. Yes.

Q. Are those your signatures? A. Yes.

Q. I call your attention to a notation on each one of those forms 8-R-LA-283 "Landlord spends week-ends at this address. Tenant has use of house," and ask you whether you wrote that on there.

A. Yes, I did, so I could stay there if I wanted to.

Q. When you filed this registration statement you represented in our office that you spent your week-ends in the house, is that correct?

A. I had been before I rented it.

Q. From the time you rented the premises you never occupied any part of that house? [43]

A. No, I never had to.

Q. These papers were filed with our office after the Actons and Joe Morris moved in, is that correct? A. Yes, they were.

Mr. Bratter: No objection.

Mr. Scheir: I offer these in evidence, your Honor, as Plaintiff's Exhibits No. 8 and No. 9.

The Court: Admitted.

Mr. Scheir: And ask permission to withdraw the same upon substituting photostatic copies.

The Court: Very well.

(Testimony of Virginia Boyd Binger.)

(The documents referred to were marked Plaintiff's Exhibits 8 and 9, and were received in evidence.)

Q. (By Mr. Scheir): Mrs. Binger, you said that the dining-room was closed off from the rest of the house. Isn't it true that there was an archway leading from the dining-room?

A. I said that there was an archway into the living-room.

Q. That was not closed off?

A. It was not. The bedrooms were closed off from the dining-room.

Q. You further testified that there was a closet used in connection with the dining-room. Where was this closet located?

A. Between the kitchen and the hall. [44]

Q. Was it located in the dining-room?

A. No, it was between the kitchen and the hall. It was a dressing-room and it had a built-in drawers and a mirror and we used it when we lived there, as a closet for the dining-room, because I rented the rooms while I was out there.

Q. You further testified that you furnished no linens to the Actons for those rooms?

A. No, I didn't.

Q. Mrs. Binger, do you have any eviction notices that were served upon you when you occupied this other place that you said you feared you would lose? A. No, I don't.

(Testimony of Virginia Boyd Binger.)

Mr. Scheir: I have no further questions, your Honor.

Mr. Bratter: Just a couple more questions.

Redirect Examination

By Mr. Bratter:

Q. At the time that the premises, this property was registered in 1945, when the property was supposed to be unfinished—— A. Yes.

Q. Was there an investigator of the O.P.A. rental office who came out to see the property?

A. I don't remember, Mr. Bratter. I didn't see him at the time. [45]

Q. After you registered this front bedroom and rear bedroom as being rented to Mr. and Mrs. Acton and Joe Morris, did an investigator of the O.P.A. come out?

A. Yes, there was one out there and I met him out there and explained to him about it and how I was renting it myself.

Q. Did you have any conversation with him concerning the relationship between Mr. and Mrs. Acton and Joe Morris, as to whether or not they were related? A. I don't remember.

Q. Did you say anything in the conversation you had with them as to whether or not Joe Morris was the son of Mrs. Acton by a prior marriage?

A. I don't remember any. I did explain to him in the course of the conversation that when it was rented before it was unfinished, and that I wanted

(Testimony of Virginia Boyd Binger.)

to re-rent it, and that I was re-renting it as rooms.

Q. You were asked by Mr. Scheir concerning whether or not you received any eviction notices. I will ask you to state whether or not you were defendant in an action entitled Emil F. Gonzales, and others, v. Virginia Binger, in the Municipal Court of the City of Los Angeles, which was an eviction proceeding.

A. Yes, I was, but when he asked me I didn't think to mention that here. [46]

Q. And I will ask you to state whether or not you were in fact evicted from your place on Wilton Street in Los Angeles in the early part of 1948.

A. Yes, I was, but they started it a long time before that.

Q. That was the disposition, the final disposition of the proceeding? A. Yes.

Mr. Bratter: That is all.

Recross-Examination

By Mr. Scheir:

Q. You say you were evicted in the early part of 1948? A. Yes, sir, I was.

Q. After you were evicted you never occupied these premises at 9715 Sunland Avenue, did you?

A. Not then I didn't, no.

Q. When you rented these premises to Mrs. Acton, did you know that Joe Morris was her son?

A. Yes, she told me, I think, true. I didn't

(Testimony of Virginia Boyd Binger.)

know if he was. I took her to be honest at the time that she told me.

Mr. Scheir: I have no further questions, your Honor.

The Court: You are excused.

(Witness excused.) [47]

Mr. Bratter: Mrs. Smith.

EILEEN SMITH

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Eileen Smith.

Direct Examination

By Mr. Bratter:

Q. Where do you live?

A. 1850 North Bronson.

Q. In the city of Los Angeles? A. Yes.

Q. Are you acquainted with Mrs. Virginia Binger, the defendant in this action?

A. Yes.

Q. For how long a time have you known her?

A. Oh, I would say over a period of about 30 years.

Q. Do you recall being in her home in the latter part of March, 1947, when Mrs. Acton and Joe Morris came to her home? A. Yes.

(Testimony of Eileen Smith.)

Q. Did you hear the conversation that took place at that time? [48]

A. I heard some of it, yes, while she was explaining the property.

Q. Did the conversation deal with the rental of Mrs. Binger's property out in Roscoe, California?

A. Yes, it did.

Q. Will you give us the substance of the conversation you heard between Mrs. Acton and Mrs. Binger and Joe Morris and Mrs. Binger?

A. Well, the fact that the property was to rent as furnished rooms.

Q. Yes. What, if anything, was said about the amount and the facilities they were to have?

A. Well, the bedrooms were to be rented with housekeeping privileges.

Q. And what was said about the amount of rent?

A. That was, as I recall, around \$25.00 a week for the rooms.

Q. For the two rooms?

A. No, for each room with the housekeeping privileges.

Q. Well, can you give any more of the conversation? Was there a conversation with respect to the whole house or each room or what?

A. No, my understanding of it was that Mrs. Acton was renting the room for herself and her husband.

Q. And what about Joe Morris? Was anything said about [49] his renting a room?

(Testimony of Eileen Smith.)

A. Not at that particular place, other than he might be needing a place to stay.

Q. Yes.

A. I think there was nothing definite said about the Sunland property.

Q. And was the arrangement with reference to a room that Mr. and Mrs. Acton were to rent also applicable to the room which Joe Morris was to rent from Mrs. Binger? A. No.

Mr. Scheir: If the court please, I object to these questions. They are leading questions.

The Court: He is asking what was said. Overruled. Go ahead.

Q. (By Mr. Bratter): You just tell us, as best you can remember.

A. Well, I just can't remember the words they had. I don't think anything was said about the Morriszes renting a room there.

Q. Were you with Mrs. Binger at the time that she went out to her property shortly after the day this conversation took place?

A. I was out there with her, I think, just about every time she went out during that period of time, yes.

Q. Were you there at the time the investigator from the [50] rent director's office was there?

A. Yes.

Q. You saw him inspect the property?

A. Yes.

Q. Were you present and did you participate

(Testimony of Eileen Smith.)

in the conversation that took place between him and Mrs. Binger?

A. No. I was there, I mean, I saw them talking.

Mr. Bratter: That is all.

Cross-Examination

By Mr. Scheir:

Q. Mrs. Smith, you say you were present when these negotiations were had between Mrs. Binger and Mr. and Mrs. Acton?

A. I was in and out of the room, yes.

Q. You were not there all the time, were you?

A. No.

Q. What time of the day was it?

A. Well, let me see if I recall that now. Usually we were back at the place on Wilton in the latter part of the afternoon.

Q. Do you recall what day it was that this conversation took place?

A. No, I really couldn't recall the day it was.

Q. Is it your testimony, Mrs. Smith, that you were not [51] present during the entire transaction? Is that correct?

A. I wasn't there during the entire transaction, but I was there in her home and knew what the transaction was, that she was renting furnished rooms at that property.

Q. Did you hear the entire transaction?

A. I didn't hear the entire transaction, no.

Mr. Scheir: No further questions, your Honor.

Mr. Bratter: No further questions. Defendant rests.

(Witness excused.)

(Whereupon the defendants rested their case.)

Mr. Scheir: I will call Mrs. Acton in rebuttal.

LILLIAN M. ACTON

recalled as a witness by and on behalf of the plaintiff, having been previously sworn, was examined and testified, in rebuttal, as follows:

Direct Examination

By. Mr. Scheir:

Q. Mrs. Acton, have you ever seen Mrs. Smith before today?

A. Not to my knowledge.

Q. Has she ever come to your house with Mrs. Binger, when Mrs. Binger has been there?

A. No, sir, she has not. [52]

Mr. Scheir: No further questions, your Honor.

Mr. Bratter: No questions.

(Witness excused.)

Mr. Scheir: Nothing further.

The Court: Proceed with the argument.

ARGUMENT ON BEHALF OF PLAINTIFF

By Mr. Scheir:

If the court please, the issue here appears to be as to how these accommodations were rented by Mrs. Binger to Mrs. Acton, inasmuch as we have

two maximum rents, one based on a rental for the entire house and one based on room rental. Now, in connection with the filing of the registration statement for the room rentals, I would like to call the court's attention to the fact that those registration statements are stamped on the face "Maximum rent subject to examination and review." I would further like to point out to the court that the one for the front sleeping room has the name James Acton and wife and the one for the back sleeping room has the name Joe Morris. Further, the statement attached to the registration statement, filed at the same time, stated in the landlord's own handwriting that she was occupying the accommodations during week-ends.

It is on that information, your Honor, the area rent office accepted these registration statements and issued [53] orders. We had no way of knowing at the time that Mrs. Binger would not be occupying the accommodations. We had no way of knowing that Joe Morris was the son of Mr. and Mrs. James Acton, inasmuch as it was a different name. I will admit, your Honor, that the evidence is conflicting as to the manner in which these premises were rented, but I think the most important factor is this: These four people who occupied this house comprised the same family, one family. Were we to permit rentals to be made to members of the same family on a room basis, we should have no rent control. It is highly inconceivable that one family in a free rental market

would agree to rent individual rooms, inasmuch as the custom as long as we can remember was for one family to rent an entire unit, and use it as an entire unit, and that was the case here. The entire house was used by each person who dwelt there. The cooking was done in the kitchen for the entire family. The entire family ate at the same table. We don't have here the situation that exists in a rooming house. We have here the situation that exists where one family rents the entire dwelling.

Now, in that connection, your Honor, I have a case in the United States Court of Appeals for the Fourth Circuit, No. 5941, Tighe Woods, Housing Expediter, v. Joseph Machen, decided December 19, 1949, not yet reported. And that case, your Honor, deals with a situation of this kind, where we [54] had a registration statement establishing the maximum rent for the entire house, and then a registration statement for portions. The upper court held in reversing the District Court that the registration statement merely informs the Expediter of the present status of the property and does not establish the maximum rent. Circuit Judge McGruder said in *Kalwar vs. McKinnon*, at Page 264, that was not a rental which had been established by the rules and regulations under 1388.284 where the rental amount is the rental received March, 1942, where nothing has been changed and the administrator has made no order fixing the maximum rent, in that particular instance at \$47.50, nor has he made any order under Section 1388.285

changing the maximum rent from that provided by Section 1388.284. If the landlord sets forth in the registration statement certain facts which are incorrect, he does not thereby establish a maximum legal rent at the asserted figure.

To make this clear the Administrator has caused to be stamped on the face of the registration statement "Maximum rent subject to examination and review," and when that examination and review is gone into we are apprised of the true facts. When these registration statements for the front sleeping-room and back sleeping-room were filed with our office we were not apprised of the true facts, inasmuch as we didn't know how the house had been rented, we didn't [55] know that Joe Morris was a member of Mrs. Acton's immediate family, and we didn't know that Mrs. Binger was not living at the premises during the week-ends, as she said in the Exhibits, I believe it is, 7 and 8.

The Court goes on to say furthermore that on December 1, 1942, the Price Administrator issued an interpretation, OPA Schedule 200:1222, stating that a dwelling rented on the maximum rent date for a specified amount, and subsequently subdivided into units, must revert to the original rent when the unit is re-rented as originally registered.

Bowles v. Mannie & Co., 155 Fed. (2d) 129; *Porter v Crawford and Doherty Foundry Co.*, 154 Fed. (2d) 431.

I have an opinion here in the Machen case, your Honor, to which I would like to refer. The build-

ing contained a first floor apartment consisting of four rooms, which was originally registered under the regulation on August 3, 1942, at a rental of \$45.00 per month, and thereafter rented to one tenant for \$45.00 per month. During 1946 the landlord altered the premises by changing the same from one unit into two units. On June 30 of that year the front apartment was registered for \$25.00 per month and the rear apartment was registered for \$35.00 per month. Those registrations of the landlord were duly filed with the local representative of the Housing Expediter and the two new apartments were then rented to two separate tenants at the rates just mentioned. On September 8, 1947, the landlord rented the two units comprising the entire first floor to a single tenant at the rate of \$60.00 per month, or the aggregate of the amounts paid by the two previous tenants. The Housing Expediter claimed that under the controlled housing rent regulation the maximum rent for the whole first floor apartment was frozen at \$45.00 per month and brought this suit for an injunction and for restitution of the rental payments in excess of the rent in existence on the freeze date. The court found the evidence shows that no major alterations were made in 1946 when the apartment was subdivided into two units and rented to two separate tenants, or at any time thereafter. The two units together comprised exactly the same space as the original single unit, and there was only one bathroom and one kitchen for the two

units. In that case the judgment of the District Court was reversed and relief prayed for in the complaint was ordered granted.

Under the facts in this case, in view of the law stated in that case, we believe that this property was rented to this family as an entire unit; it was used by them as an entire unit; that Mr. Binger misrepresented when she filed these individual registration statements; that inasmuch as we did not have the true information, our examination and review, if such there were, was based on this, and therefore [57] the maximum rent permissible is \$40.00 per month, when rented for an entire family, and that the judgment should be entered in favor of the plaintiff.

The Court: I am not saying yet what the evidence shows. The defendant in this case has testified that while the maximum rent was fixed at \$25.00 a month, yet she furnished certain utilities without cost to the tenant.

Mr. Scheir: That is true, your Honor.

The Court: You see, if she was to collect that, the minimum amount would be \$15.00 up to \$40.00. That has not been disputed, in addition to the rent fixed, and that was inside of the \$25.00, so she testifies here, and I have not heard any evidence to dispute in any way that she furnished in addition to that certain utilities which amounted to about \$13.00 a month more than that. If this tenant had rented for \$40.00 a month, we will have to add that cost.

Mr. Scheir: If your Honor will recall, the defendant in her testimony stated that it was a minimum, and in that connection I would like to cite——

The Court: She said that was the understanding between them.

Mr. Scheir: Regardless of the understanding between the parties, your Honor, any services that she may have furnished [58] in connection with the use of the housing accommodation becomes moot when we weigh the matter under the regulations.

The Court: Sure.

Mr. Scheir: In other words, the landlord cannot put in a new refrigerator and say, "I will charge you \$5.00 per month more." He must come in and petition for an increase. That is what the judge said where they put in a pair of curtains and charged \$2.00 more per month. So if the court wishes these other citations, I can certainly present them.

The Court: No, I didn't make any ruling. I will hear from the defendant, what he has to present.

Mr. Scheir: Thank you, your Honor.

ARGUMENT ON BEHALF OF DEFENDANTS

By Mr. Bratter:

Your Honor, this is not the ordinary rent case where the landlord charges excessive rents and

then a complaint is filed against him. This is a case where the landlord went to the government and gave them the facts she had at hand and went and filed a registration that way, and the exhibits here show that the rent director made a decision and fixed the rent ceiling at \$25.00 a week for the two rooms or \$12.50 per week if occupied by one occupant. So that we do not have the matter referred to by counsel in those cases he has cited that are based merely upon a registration, the [59] registration merely stating that the landlord has filed a statement, we have the landlord not only filing her statement, but we have a decision fixing the minimum at \$12.50 per week for each room if occupied by two persons.

So we have here at least an opportunity given the government to find out the facts, and the decision of the rent director was based upon hearings, notice was served upon all parties, and all parties had a right to come in and be heard before that decision, and finally the decision came forward on June 18, 1947, according to the exhibits we have here in evidence.

Now, the contention is made in the government's testimony that Joe Morris was a member of Mrs. Acton's family. There is nothing in the evidence here to dispute that contention of the government and there is no evidence that he did not have that connection.

The Court: There is testimony here that the

charge was \$40.00 instead of \$25.00. What is your answer to that?

Mr. Bratter: My answer to that is, your Honor, that that was the rent ceiling before these people became tenants and before the rent director made a new ceiling; that when he issued the orders in 1947 he established a new ceiling covering the situation here involved.

The Court: \$25.00 after that and \$40.00 before?

Mr. Bratter: Yes. [60]

The Court: Then he reduced it from 40 to 25.

Mr. Bratter: No, the 25 was at the rate of \$12.50 per room for two rooms per week.

The Court: Per week?

Mr. Bratter: Yes. Before that it was monthly, and then it was \$12.50 each week for two rooms.

The Court: Where did this \$40.00 rent come in?

Mr. Bratter: In 1945 when it was just an unfinished place, the ceiling was established at \$40.00 per month.

The Court: Then it was raised to \$25.00 a week for the two rooms, that is your contention?

Mr. Bratter: That is the situation we have now, and the government says that is all true, but because Joe Morris happened to be related to Mrs. Acton that this is an entirely different situation, and we must have rented it to Mrs. Acton's family. I say it is a matter purely between the Actons and Joe Morris. They had understood at the time that they were renting two rooms with house privileges, and that if Mrs. Binger had the right to come in

and use part of the facilities, there is no evidence that she was denied the right at any time, there is no evidence here that she concealed any information from the government, so that the most that could be said is that the government, because it had or appeared to have a technicality here—that we are not to be blamed if Joe Morris' name is not the same as Mr. and [61] Mrs. Acton's. I say all the information we had was certainly given the government, and more than that, after the registration was filed and after the decision of the government fixing the rent ceiling, an investigator of the government came out and inspected the building, and a change was made in this order. That is, I feel, an element that ought to be considered in connection with the government's contention that the relation was concealed, and they had the opportunity to determine that relationship. It is our position that not only were these new accommodations with a different tenant, but that it was the first renting, and that the rent was determined as \$12.50 a week, \$12.50 for each room and she paid the utilities that cost \$15.00 to \$20.00 a month.

The Court: Then in general is it your position that they did not take that into consideration, that is, the Expeditor's Officer, as to the services rendered and did not give the landlord credit for the cost to her?

Mr. Bratter: The reason for that assumption we think is this:

The Court: Get it right down to that point.

Mr. Bratter: We say that at the time the landlord went to the rent director and got these rulings, at the time that she did that she was not really applying for an increase, but that she went to the rent director and said, "We are renting the bedrooms together with the house facilities, and I am [62] giving these additional facilities, more than we gave before, and we want you to fix a rent ceiling on these rooms," which he did, and I say when he did that, that the \$40.00 a month was out of the picture and a new ceiling was fixed on the property.

The Court: And he increased it to \$25.00, you say, for the two rooms?

Mr. Bratter: That is correct.

The Court: And that is what you told the tenants about it?

Mr. Bratter: That is right, and the government is trying to make us make restitution for the full rate that was paid and that was collected, and not even give us credit for the utilities that averaged out from \$12.00 to \$20.00 a month. I think that all these matters weigh very strong for this defendant, and the court should take all these matters into consideration.

FURTHER ARGUMENT ON BEHALF OF PLAINTIFF

By Mr. Scheir:

Your Honor, the counsel for the defendant is attempting to show that we have been very, very

arbitrary about this defendant. Commonly where additional facilities and services are rendered and the landlord comes in with a petition for an increase, he is allowed that, but in this case, as in so [63] many other cases, the defendants have not filed this petition for increase in order to permit this rental to be determined on the additional.

The Court: Well, the courts have held that you have to deal in good faith. They have held it is the rule of these courts that you have to petition for the order.

Mr. Scheir: That is well-established law, your Honor.

The Court: Yes, that is the way they are holding.

Mr. Scheir: Now, I would like further to point out, as was held in those cases I cited to the court, the fact that the defendant filed another registration statement does not change the maximum rent. The maximum rent for the entire unit remains at \$40.00 per month. I contend that the information given to us by the defendant in these two additional registration statements and in the statements attached to the registration statements were not true, when it puts us under the impression that two bedrooms had been rented to these people unrelated and that Mrs. Binger was retaining the balance of the house. The testimony here of Mrs. Binger herself was to the effect that at the time she filed this statement she had not been living there in the six months period and that at no time

during the occupancy of the Actons did Mrs. Binger occupy any portion of that property. Therefore it is our contention that this house was rented in its entirety to the Actons as a family unit, and as such it was [64] used by them, and that the maximum rent of \$40.00 per month should apply.

Mr. Bratter: We are willing to submit our case, your Honor, completely on the order issued by the rent director fixing the rent for this property at \$12.50 per week for each of the rooms, not merely registration, but the order issued by the rent director.

The Court: That would be \$25.00 a week for the two rooms.

Mr. Bratter: Yes.

The Court: And that the government contends should be \$40.00.

Mr. Scheir: \$40.00 per month, your Honor, yes, as against \$25.00 per week.

Mr. Bratter: That was the 1945 ceiling. Then when certain improvements had been made by these people and they were paying the utilities, we asked that it be fixed at \$12.50 per room for each room, and the Expediter fixed it then at that.

The Court: When?

Mr. Bratter: In 1947.

The Court: In 1947 he fixed it at \$40.00.

Mr. Bratter: Yes, \$12.50 per room per week.

The Court: That is \$25.00 a week. Prior to that it was \$40.00 a month, you say? [65]

Mr. Bratter: That is right.

The Court: What caused him to raise it?

Mr. Bratter: Well, the tremendous improvements which were made on this property. The witness testified that she spent about \$3,000 on the property, besides paying the utilities on the house.

Mr. Scheir: I would like to clarify that point, your Honor. Those matters were not raised on the basis of any—there has been no petition filed for adjustment. This landlord filed two registration statements stating that she was renting the two individual rooms. It is our contention that she rented the entire house. Furthermore, she stated that she herself was retaining a portion of the property and was occupying a portion of it. Under those circumstances, your Honor, the landlord retaining a portion of the house would be entitled to rent individual rooms, and from the information given to us by this defendant the agency would have no opportunity to know that this information was not true.

Mrs. Binger herself testified that she did not retain any portion of the property, and inasmuch as she did not occupy any portion of it, either seasonally or on any basis, it is our contention that the tenant occupied the entire house and therefore the \$40.00 per month should stand.

Mr. Bratter: Your Honor, on that matter the defendant [66] testified definitely herself that she was reserving the dining-room for a sleeping place for herself in the event she should need it.

The Court: In this answer to the complaint she said the amount of rent was \$25.00 per week.

Mr. Bratter: That is for the two bedrooms.

The Court: That is for two bedrooms, but the maximum rent is \$40.00 a month.

Mr. Bratter: Their pleadings, your Honor, discloses that a later maximum was fixed in 1947. All the facts are contained in the pleading, your Honor.

The Court: \$25.00 a week, that is a hundred dollars a month. The rent was fixed at \$40.00 a month. That would be \$60.00 more they raised it a month, wouldn't it? Does that figure out the \$950? Have you figured it out?

Mr. Scheir: That is correct, your Honor.

The Court: It is the difference between \$40.00 and a hundred dollars a month.

Mr. Scheir: That is true.

The Court: The \$25.00 was fixed at the period that you are setting up here. They occupied the entire house?

Mr. Scheir: It is our contention, your Honor, from the facts shown that they did.

The Court: One of these rooms was occupied by a son?

Mr. Scheir: And those rooms were occupied with a son [67] sleeping in one room and Mr. and Mrs. Acton sleeping in the other room, and they used the entire house, each member of the family had the right to use the entire house.

The Court: That is the testimony. Do the receipts disclose that?

Mr. Bratter: Yes, the receipts run both to Mr. Morris and Mrs. Acton. They are separate receipts,

two weeks and a week, respectively. Mr. Morris was not dependent on the mother. He was 23 years old at the time, and he had been with the Flying Tigers.

The Court: He was a son, wasn't he?

Mr. Bratter: Yes, but the mere fact that he was a son by a prior marriage does not necessarily make him a member of the same family.

The Court: Well, how were they living there together? That is the question I have got to solve. How were they living there together?

Mr. Bratter: If Joe Morris had been John Smith, who was not related to the Actons, there wouldn't be any question, because their whole claim turns on the fact that Joe Morris was a son, therefore they say that fact in itself changes the basis to one family using it. That is a pretty narrow thread, I think, for distinguishing. There is no law, the rent regulation or rent law itself does not say that because Joe Morris happened to be a son by a prior marriage, that that [68] would knock out our rent regulation and that we would not have the right to rent out that room. If the government was dissatisfied with the report we were making, and we disclosed to the government that we were renting to Joe Morris and Mrs. Acton and her husband, then they should not have made this regulation that fixed the rent ceiling themselves.

Mr. Scheir: The rent regulation does prohibit evasive practices, your Honor, and it is an evasive practice in which a family is forced to rent in-

dividual rooms whereas we know that a family unit occupies the entire house and uses the entire house, and this is merely a device to evade the maximum rent of \$40.00 per month.

The Court: The amount of rent paid and charged here to be \$25.00 a week for the two occupying one room and two who occupied the other room, which would be \$100.00 a month, and the maximum is fixed at \$40.00 per month. There is \$60.00 a month difference between the hundred dollars and \$40.00. The Expediter raised the rent, then, from \$40.00 a month to \$25.00 a week. Does that check with those receipts? Call my attention to those receipts again. Are they \$25.00 a month or a week?

Mr. Scheir: They are \$25.00 per week, your Honor, as against the maximum rent of \$40.00, which as I say is the maximum rent, the receipts are each made for \$25.00 for two weeks for each room. There is a separate receipt for [69] each room.

The Court: That runs about a hundred dollars a month, doesn't it?

Mr. Scheir: A little more than a hundred dollars a month.

The Court: That is the amount you said they paid. That maximum rent was fixed at \$40.00 per month, and it wound up at the rate of \$25.00 a week.

Mr. Scheir: We contend, your Honor, that the \$40.00 per month maximum rent still exists for

that house. That language is peculiar in there. We have a good claim for the excess.

Mr. Bratter: We contend that a new ceiling was fixed at \$12.50 per week, your Honor. I would like to clarify. When there was a new ceiling fixed, there is a maximum rent for the entire house and there is a maximum rent for individual rooms, so under the record facts themselves they have got that mixed up, that is the Expediter gets things mixed up in his office in fixing the rent, that is all.

Mr. Scheir: On that point, your Honor—

The Court: I am trying to find out when the change—when he changed this from \$40.00 and raised it to \$25.00 a week?

Mr. Bratter: The \$40.00 rent ceiling was made in 1945, your Honor. The \$12.50 per week rent ceiling was made in 1947, after this rental took place which is involved in this [70] action.

The Court: That would be a hundred dollars a month, then.

Mr. Bratter: Yes.

The Court: Prior to that it was \$40.00 per month, so he has raised it.

Mr. Bratter: That is right.

The Court: Yes, that is right, so it says here, that was the amount paid, \$25.00.

Mr. Bratter: The government made this complaint and made no representation whatsoever of the new ceiling, but ignored it entirely.

Mr. Scheir: Your Honor—

Mr. Bratter: And in the questionnaire which

was submitted by us for the pretrial we stated we were standing on the order of the rent director fixing the rent at \$12.50 per week per room, the order made by the rent director in 1947.

The Court: According to the statement attached to your complaint, you have a slip in the amount of rent paid and who paid it.

Mr. Scheir: The tenant, Mr. and Mrs. J. D. Acton.

The Court: You have got them credited with \$25.00 a week.

Mr. Scheir: That is correct.

The Court: And you said that the maximum rent was \$40.00 a month. [71]

Mr. Scheir: That is correct. We claim the tenant overpaid.

The Court: Oh, the tenant overpaid?

Mr. Scheir: Yes, the tenant overpaid. He was supposed to pay \$40.00 a month and paid \$25.00 a week.

The Court: There is \$60.00 a month difference.

Mr. Scheir: A little more than \$60.00, yes.

The Court: These receipts disclose what the charge was, you say?

Mr. Bratter: Prior to the time of these two later.

The Court: Reading one of them it says, "\$25.00 two rooms and kitchen privileges, Mr. and Mrs. James Acton, April 1st to April 8th, \$25.00." Another April 8th to April 22, \$25.00. That is two weeks. That is for the one room. That is more than \$40.00 a month.

Mr. Bratter: If the court please, I would like to call your Honor's attention to the fact that two receipts were issued at the same time, both dated the same day, each in the sum of \$25.00, and they cover a two-week period, in other words, \$50.00 were paid during the two-week period.

The Court: They paid \$25.00 a week there, but the maximum is fixed at \$40.00.

Mr. Bratter: And we say we charged that rent because we were allowed to by the order of the rent director fixing it at \$12.50 for each room, \$25.00 a week for the two rooms. [72]

The Court: Renting it individually, but there you have one family, and then two men occupied one room, one of them was on his own.

Mr. Scheir: Your Honor, both were sons of Mrs. Acton. One was eleven, I believe, and the other was twenty-three. There is no evidence here that there were two sons involved in this proceeding. The only evidence we have here is as to Mr. and Mrs. Acton and Joe Morris. That is the only evidence there is in this record, if your Honor please. Mrs. Acton testified that she, her husband, and her two sons, one aged eleven and the other aged twenty-three occupied this house, and all those lived there during the time they occupied it.

The Court: They all lived together and used the house together, she says, for all their purposes?

Mr. Scheir: That is correct.

The Court: Of course, that includes cooking and eating and bathing and all those things, they

all used together. It is a question of whether you can divide up the individual rooms that way and bring it under that.

Mr. Bratter: Your Honor, isn't this a case which is so close on the facts that I can see that it is giving the court considerable difficulty to determine just where the dividing line lies? I think unless a case is clear-cut, that the government should not be permitted to impose a [73] penalty on this defendant. I think the case is close enough so the parties ought to be left to rest where they are.

The Court: I will think it over until in the morning. You come down in the morning, and I will see if I can reach a conclusion. I want to think it over a little.

Mr. Scheir: Very well. Then the witnesses may be excused? They won't have to come tomorrow?

The Court: No, they won't have to be here tomorrow. The rule is that the burden is on the plaintiff to prove its case, the same as any other suit.

Mr. Scheir: Your Honor, we feel we have proved the case.

The Court: Of course, there is some conflict here between you, but the preponderance of evidence does rule in this case the same as any other civil suit where one endeavors to recover a civil judgment against another. If there is any difference between this and any other cases, as far as that is concerned, the general rule is applicable.

Mr. Scheir: May I point out to the court that

there is no contradiction of the use to which the property was put, and that it was used by the entire family. There is no controversy as to that, and that is our contention, your Honor. That is the best way to answer that.

The Court: The rent was paid by one member of the family?

Mr. Scheir: That is correct. [74]

Mr. Bratter: Well, let's see about that. The receipts are made out to Mr. and Mrs. Acton.

Mr. Scheir: The receipts, your Honor, were merely a means of evading the law.

The Court: I will recess until tomorrow morning at 10:00 o'clock.

(Whereupon, an adjournment was taken on Monday, January 30, 1950, until 10:00 o'clock a.m., Tuesday, January 31, 1950.) [75]

Tuesday, January 31, 1950, 10:00 A.M.

DECISION

The Court: Are the parties present on the case we tried yesterday?

Mr. Bratter: Yes, your Honor.

Mr. Scheir: Yes, your Honor.

The Court: Both are present. I have reached a conclusion in that case, and I find under the evidence that the defendant has complied with the regulations and the law in getting an increase in rent for this house; that the son occupied one bedroom and the Actons the other.

I find that they tried for and got that increase from the Expediter, allowing the amount they charged, \$25.00. I do not decide the case on the question of equity, or any of those things. That is for the Expediter. But under the regular proceeding the defendant went to and got this increase covering this period of time, and was allowed to charge the \$25.00, which she did, and which she gave a receipt for, and the judgment will be in favor of the defendant. You may draw a decree and findings holding that.

Mr. Bratter: Very well, your Honor. [77]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 1st day of April, A.D. 1950.

/s/ MARIE G. ZELLNER,

/s/ E. L. DRUMMOND,

Official Reporters.

[Endorsed]: Filed April 12, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 32, inclusive, contain the original Complaint for Restitution and Injunction; Answer; Request for Admissions Under Rule 36 Federal Rules of Civil Procedure; Admissions Requested Under Rule 36 filed April 22, 1949 and May 2, 1949; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal, Statement of Points on Appeal and Designation of Record on Appeal which, together with original plaintiff's exhibits 1 to 9, inclusive, and the original reporter's transcript of proceedings on January 30 and 31, 1950, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 17th day of April, A.D. 1950.

EDMUND L. SMITH,
Clerk,

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12525. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. Virginia Binger, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 19, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12525

TIGHE E. WOODS, Housing Expediter, Office of
the Housing Expediter,

Plaintiff,

vs.

VIRGINIA BINGER, DOES I TO X,

Defendants.

STATEMENT OF POINTS ON APPEAL

The following are the points upon which Appellant intends to rely upon the appeal:

1. The lower Court erred in holding that the maximum rent for the housing accommodations was \$25.00 per week, the aggregate of the maximum

rents for two sleeping rooms, and not the sum of \$40.00 per month, the maximum rent for the entire unit.

2. The lower Court erred in holding that the violations alleged in the Complaint were not established and in refusing to grant judgment in favor of the plaintiff as prayed for in the Complaint.

ED DUPREE,
General Counsel.

LEON J. LIBEU,
Assistant General Counsel.

BENJAMIN FREIDSON,
Special Litigation Attorney, Office of the Housing
Expediter, Washington 25, D. C.

Dated this 25th day of April, 1950.

Proof of Service attached.

[Endorsed]: Filed April 28, 1950.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD
ON APPEAL

Pursuant to subdivision 6 of Rule 19 of the Rules of the United States Court of Appeals for the Ninth Circuit, appellant, Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, hereby designates for inclusion in the Record on Appeal:

1. Complaint filed February 4, 1949.
2. Answer filed March 1, 1949.
3. Plaintiff's Request for Admissions Pursuant to Rule 36, filed April 11, 1949.
4. Admissions Requested Pursuant to Rule 36, filed April 22, 1949.
5. Admissions Requested Under Rule 36, filed May 2, 1949.
6. Findings of Fact and Conclusions of Law by the Court, filed February 13, 1950.
7. Judgment of the Court entered February 14, 1950, in Civil Order Book No. 63, Page 767.
8. Entire Reporter's Transcript of all testimony and proceedings at the trial.
9. All exhibits.
10. Notice of Appeal dated March 31, 1950.
11. Statement of Points upon which Appellant Intends to Rely on Appeal.

11. Clerk's certificate.

12. This Designation.

ED DUPREE,
General Counsel.

LEON J. LIBEU,
Assistant General Counsel.

BENJAMIN FREIDSON,

Special Litigation Attorney, Office of the Housing
Expediter, Washington 25, D. C.

Dated this 25th day of April, 1950.

Proof of Service attached.

[Endorsed]: Filed April 28, 1950.